

A circular black ink stamp from the Office of Intellectual Property (OIPE). The text "OIPE" is at the top, "JUN 06 2002" is in the center, and "PATENT &amp; TRADEMARK OFFICE" is at the bottom. To the right of the stamp, the text "In the presence of" is partially visible.

**COPY OF PAPERS  
ORIGINALLY FILED**

James Kleinsteinber  
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Hung Nguyen  
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Docket No. 112-0039US

## Art Unit

**Examiner:**

Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20232

JUL 15 2002

Dear Sir:

### Summary of Petition.

1

In support of this petition, Applicant shows as follows:

1. The Declaration of Louis Brucculeri, the attorney for Applicant, with whom Mr. Gunawardena has been in contact. The Declaration shows the following:
  - (A) A bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to Mr. Gunawardena.
  - (B) Mr. Gunawardena actually received a copy of the application papers (specification, including claims, drawings, and oath or declaration).
  - (C) Mr. Gunawardena refused to join the application.
  - (D) Mr. Gunawardena refused to sign the declaration.
2. Mr. Gunawardena's Employment Agreement with Applicant, calls for his cooperation.
3. All other inventors of the subject application have signed the declaration.
4. Attorney for applicant has spoken to Mr. Gunawardena on several occasions to solicit his participation in the application process.
5. Applicant corresponded with Mr. Gunawardena at the following address, phone number and email address. These are Mr. Gunawardena's last known address and phone number.

827 Newport Circle  
Redwood Shores, CA 94065  
650-594-1360  
[dilip\\_gunawardena@yahoo.com](mailto:dilip_gunawardena@yahoo.com)

#### Argument

Dilip Gunawardena is Applicant's ex-employee and a person that Applicant believes is an inventor of the subject application. Over a five-week period, Applicant has attempted to solicit cooperation from Mr. Gunawardena regarding the subject application. During this period, Applicant's representative has spoken by phone with Mr. Gunawardena several times, written three letters to Mr. Gunawardena and sent several emails. Brucculeri Declaration Paragraphs 4 – 5. Other than during phone conversations, Mr. Gunawardena has refused to respond substantively. For example, all the emails sent by Mr. Gunawardena are limited to requests for phone calls and associated phone call scheduling. Brucculeri Declaration, Paragraph 5,

Mr. Gunawardena's failure to cooperate is in direct contravention to his employment agreement with Applicant, wherein Mr. Gunawardena assigns his rights to the subject invention and agrees to post-employment cooperation. Brucculeri Declaration, Paragraph 7. Notwithstanding this agreement, Mr. Gunawardena has unequivocally conveyed that he will not cooperate with prosecution of the subject application unless Applicant pays him \$250,000.00 over a two-year period. Brucculeri Declaration, Paragraphs 8 through 15. In furtherance of his refusal to sign or cooperate, Mr. Gunawardena has conveyed that, unless he is so compensated, he will take legal action to prevent the issuance of a valid patent to Applicant. Brucculeri Declaration, Paragraph 8. In addition, Mr. Gunawardena has conveyed that his \$250,000.00 offer is not negotiable and that after May 31, 2002 there would be no further opportunities for discussion. Brucculeri Declaration, Paragraph 9.


In a generous gesture of cooperation, Applicant has offered to compensate Mr. Gunawardena for reading the application and signing the declaration (if appropriate). Applicant offered up to \$200 per hour to a maximum of \$2000. Brucculeri Declaration, Paragraph 11. Mr. Gunawardena refused this offer. Brucculeri Declaration, Paragraph 12.

Through this submission including the Brucculeri Declaration, Applicant has shown that a copy of the subject application (along with declaration and assignment forms) were sent to Mr. Gunawardena and received by him. Applicant has further shown, that Mr. Gunawardena has refused to cooperate in any way, including by joining the application or signing the Rule 1.63 declaration. Given Mr. Gunawardena's statements and course of conduct, Applicant has shown that Mr. Gunawardena will not cooperate now or in the future unless given extortive compensation. Lastly, Applicant has provided Mr. Gunawardena's contact information.

Therefore, Applicant has met the requirements of 37 CFR 1.47, with respect to Mr. Gunawardena's refusal to join the application and Applicant respectfully requests approval of this petition.

A check for the fee of \$130.00 is enclosed. Any shortage or overage may be deducted or credited from deposit account 501922.

Respectfully submitted,

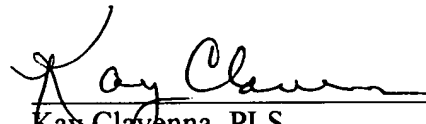
  
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Lou Brucculeri, Reg. No. 38,834

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CERTIFICATE OF MAILING UNDER 1.8

I hereby certify that this document is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to Commissioner of Patents, Washington, D.C. 20231 on May 28, 2002.

  
\_\_\_\_\_  
Kay Clavenna, PLS



OFFICE OF PETITIONS

P:\CLIENTS\Brocade-112\0039US\Declaration of Louis Brucculeri in support of Petition under F1.doc

6. I spoke to Mr. Gunawardena regarding the subject application on April 5, 2002.

A. I explained that Brocade had filed the subject patent application and that we believed he was an inventor.

B. He agreed that he was a past contractor and past employee of Brocade.

C. He suggested that he would desire an upfront payment and a royalty in order to be cooperative regarding subject application.

D. I explained that his employment agreement would have given his commitment to cooperate.

E. We agreed that he would need or want to understand his employment agreement in order to determine what to do.

7. On Monday, April 8, I sent Mr. Gunawardena a copy of his employment agreement. The Employment Agreement is attached to this declaration as Exhibit I and contains, a §3 "Inventions." In §3, Mr. Gunawardena assigns all inventions to Applicant without royalties and agrees to cooperate with prosecution after termination of employment.

8. On Tuesday, April 16, 2002, I spoke again by phone with Mr. Gunawardena.

A. Mr. Gunawardena conceded that Brocade was the first to ever use port authentication of any kind in a fabric environment.

B. Mr. Gunawardena further conceded that Brocade was the first to use port authentication of any kind in a Fibre Channel environment.

C. While Mr. Gunawardena had not yet seen the patent application, he generally conveyed that the application would be invalid without his cooperation.

D. Mr. Gunawardena offered his assistance with the applications for \$250,000.000 paid over two years. The specifics of Mr. Gunawardena's offer are in My April 17 letters, attached along with Federal Express documents as Exhibit 2.

E. After drafting the April 17 letters, I again spoke to Mr. Gunawardena to reach agreement on the wording of his \$250,000 offer.

F. While on the phone, I read to him my draft and he made several edits (all of which are incorporated in Exhibit 2).

G. Mr. Gunawardena stated that he would take legal action if Brocade attempted to go forward without meeting the terms of his \$250,000 offer.

9. On Monday April 22 I spoke again to Mr. Gunawardena.

A. He confirmed that my letter of April 17 (Exhibit 2) was an accurate description of his proposal

B. He conveyed that, if Brocade did not accept his offer, he would spend "millions" of his own money to make sure that a valid patent does not issue.

10. On Friday, May 10, I spoke again to Mr. Gunawardena.

A. He wanted to remind me that his offer was non-negotiable and that after May 31, there would be no further opportunity for discussion.

B. I told him that I sent a package on that day containing Brocade's proposal and a copy of the application and associated papers.

11. On Friday, May 10, I sent a copy of the application, declaration papers and assignment papers to Mr. Gunawardena. The copy of my letter is enclosed as Exhibit 3. Generally, the letter requests Mr. Gunawardena's cooperation and offers him up to \$200 per hour (to a maximum of \$2000) to read the application and sign the papers if appropriate. The package sent included return Federal Express materials and a form for Mr. Gunawardena to expressly accept or reject Brocade's offer. Receipt of the material by Mr. Gunawardena on May 13, 2002 at 11:03 a.m. was verified by checking with Federal Express.

12. On Tuesday, May 13. I spoke to Mr. Gunawardena again.

A. He confirmed receipt of the package I sent on May 10.

B. He declined Brocade's offer and reiterated his refusal to cooperate unless Brocade met the precise terms of his \$250,000.00 offer.

13. Mr. Gunawaredena has not returned any material as of the date of this declaration.

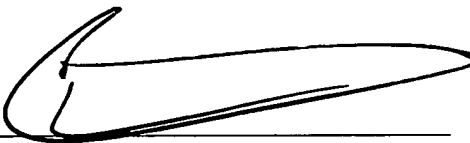
14. During my various conversations with Mr. Gunawardena, he made numerous remarks concerning the potential validity or scope of a patent drawn in this

area of technology. I have not recounted those comments because they are not relevant to Mr. Gunawardena's refusal to cooperate in prosecution.

15. In summary, on several occasions and over several conversations, Mr. Gunawardena declined to cooperate with the prosecution of the subject application in any respect (even to send a letter back to me), unless Brocade agreed to the terms of his \$250,000 offer.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

May 28, 2002

  
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